IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11114 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIKHIBEN MAFATLAL PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR NV SOLANKI for Petitioner(s) : 1,
MR.JASHWANT K. SHAH, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 and 3.
MR PINAKIN M RAVAL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 26/07/2007

ORAL JUDGMENT

Smt.Bhikhiben Mafatlal Patel, who was the President of Mansa Nagarpalika since 10.10.2005,

removed by order dated 18.05.2006 by the Director of Municipalities.

2. A Show Cause Notice dated 15.04.2006 was issued to the petitioner by the Director of Municipalities under section 37 and 70 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as “the said Act”).

The facts of the case are that the petitioner issued Work Order for laying down pipelines for drinking water, tenders for which were invited by an advertisement in a daily newspaper, in response to which tenders were received. Prior to the petitioner becoming President on 10.09.2005 her predecessor in office, Shri Govindbhai Bhagwandas Patel had issued Circular dated 05.09.2005 calling the meeting of the 'Karobari Samiti' for considering the tenders by opening the same in presence of the members of the 'Karobari Samiti' on 06.09.2005 at 04.00 PM. Exercise was undertaken and Rozkam was prepared, marking out the three lowest tenderers for three different works. The list of tenderers is at page 47

to this petition. After that exercise was undertaken on 06.09.2005 which was not during the tenure of the present petitioner as President, the Work Order was required to be issued and that was issued. It is with regard to this 'issue of Work Order', the Show Cause Notice is issued to the petitioner. The notice issued is defective as the petitioner is called upon to explain as to why she should not be removed from the membership of the Municipality. If at all the irregularity had taken place, the same had taken place when the petitioner was acting a 'President' and not as a member. Secondly, it is mentioned in the Show Cause Notice that the Work Order is given without referring the matter to the 'Karobari Samiti' as required under subsection (2) of section 67 of the Act. Thirdly, it is mentioned in the notice that the work is given without recording any reasons at 16% higher rate. This gives an impression as if the financial loss is caused to the Municipality by giving work at 16% higher rate.

3. The Director of Municipalities has passed an order removing the petitioner from the post of

President of Mansa Nagarpalika and not from the membership of the Municipality.

4. Mr.Solanki, learned advocate for the petitioner invited attention of the Court to the background in which the order impugned is passed. He submitted that the petitioner was elected in an election held in 2003. For the first half of the term, her predecessor, Shri Govindbhai Bhagwandas Patel was the President, he ceased to be the President on 09.09.2005. Before the expiry of his term as President an election was held for electing the President for the second half of the term. In that election, the political party to which the petitioner belong gave mandate that Smt.Arunaben Vinodbhai Patel be elected as President of the Nagarpalika. Despite that mandate, the petitioner contested for the post of President, against the will of the party, and got elected. For this act of hers, she was issued Show Cause Notice dated 14.09.2005 by the party for suspending her from the party.

Mr.Solanki, learned advocate for the petitioner

submitted that as if this was not enough a No Confidence Motion was moved against the petitioner on 31.01.2006, which too failed on 12.04.2006. It is in this background as a last resort, on technical grounds of having Work Order to the lower tenderer, whose rate was found to be 16% higher than the estimated rate, Show Cause Notice was issued. Pursuant to that Show Cause Notice order is passed by the Director of Municipalities dated 18.05.2006, which is under challenge before this Court.

5. Learned advocate Mr.Shah, invited attention of the Court to subsection (2) of section 67 of the said Act. It pertains to, “Tenders to be invited for contracts involving expenditure exceeding Rs.5000/-. Subsection (2) of the said Section reads as under:

> “The Chief Officer shall not be bound to accept any tender which may be made in pursuance of such notice, but may, with the approval of the Executive Committee, accept any of the tenders so made which appears to him, upon a view of all the circumstances, to be the most advantageous or may for reasons recorded reject all the tenders

submitted to him.”

The subsection asks the Chief Officer to do and not to do some thing. That being so, it was the duty of the Chief Officer to invite attention of the President, more so when it is a lady President to this technical aspect of the matter. The aspect is referred to be technical because in fact, during the tenure of the earlier President the entire exercise of considering the tenders was undertaken in the meeting of the 'Karobari Samiti' held on 06.09.2005. The tenders, received from various parties, as many as 9 in number, were considered by the Karobari Samiti. The list of tenderers along with their rates is at page 47. The lowest tender was 16% higher than the estimated cost of the tender work. The work is given to the lowest tenderer. Therefore, the only irregularity which can be alleged to have been committed by the petitioner is that the petitioner did not comply with the endorsement made by the outgoing President that three tenderers having the lowest rates, be called for negotiations and the matter which ought to have been placed before the

Karobari Samiti before awarding the Work Order, was not placed.

In the opinion of this Court that is too technical a view which is taken by the Director of Municipalities, more particularly when the Chief Officer is not supporting the lady President.

6. In view of the aforesaid discussion, the Court finds that the irregularity alleged against the petitioner is super-technical and cannot be a basis for removing her from the post of the President. In the result order dated 18.05.2006 is quashed and set aside. The Special Civil Application is allowed. Rule is made absolute. No order as to cost.

(RAVI R. TRIPATHI, J.)

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